FILED

OCT 23 2003

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RANDALL SIMMS,

      Plaintiff - Appellant,

  v.

BOZEMAN DEACONESS HOSPITAL,

      Defendant - Appellee.

No. 02-35784

D.C. No. CV-01-00016-DWM

MEMORANDUM[*]

Appeal from the United States District Court
for the District of Montana
Donald W. Molloy, District Judge, Presiding

Submitted October 9, 2003[**]
Seattle, Washington

Before: D.W. NELSON, KOZINSKI, and McKEOWN, Circuit Judges.

Randall Simms appeals the grant of summary judgment below.

Simms failed to comply with Federal Rule of Civil Procedure 56(f), which

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   [*]   This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

   [**]   This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

specifies that a party requesting the district court to exercise its discretion to allow for further discovery prior to summary judgment must file an affidavit in support of his request. Simms did not submit an affidavit; therefore the district court did not abuse its discretion in granting summary judgment while discovery in the related state case was pending.

Simms fails to establish any genuine issues of material fact to support his claim that Bozeman Deaconess Hospital violated the Emergency Medical Treatment and Active Labor Act (EMTALA). The treatment that Simms received in the emergency room was no different than that received by other patients presenting similar symptoms. See Jackson v. East Bay Hosp., 246 F.3d 1248, 1256 (9th Cir. 2001). The medical screening performed identified acute and severe symptoms that required immediate medical attention. The emergency medical condition that was detected was stabilized. Therefore, the duties imposed on the hospital emergency room by EMTALA were fulfilled.

The ruling of the district court is

AFFIRMED.